

## § 2.73

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the missing information can be requested.

(b) A prisoner may have a representative at the hearing pursuant to § 2.13(b) and the opportunity for prehearing disclosure of file material pursuant to § 2.55.

(c) A victim of a crime, or a representative of the immediate family of a victim if the victim has died, shall have the right:

(1) To be present at the parole hearings of each offender who committed the crime, and

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or representative who gives testimony. In lieu of appearing at a parole hearing, a victim or representative may request permission to appear before an examiner (or other staff member), who shall record and summarize the victim's or representative's testimony. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for confidentiality by the victim or representative.

(d) Attorneys, family members, relatives, friends of the prisoner, or other interested persons desiring to submit information pertinent to any prisoner, may do so at any time, but such information must be received by the Commission at least 30 days prior to a scheduled hearing in order to be considered at that hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing. An office visit at a time other than set forth in

this paragraph may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22.

(e) A full and complete recording of every parole hearing shall be retained by the Commission. Upon a request pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

(f) Because parole decisions must be reached through a record-based hearing and voting process, no contacts shall be permitted between any person attempting to influence the Commission's decision-making process, and the examiners and Commissioners of the Commission, except as expressly provided in this subpart.

[65 FR 45888, July 26, 2000, as amended at 68 FR 41530, July 14, 2003; 69 FR 5274, Feb. 4, 2004]

### § 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code 24–404(a), the Commission shall be authorized to release a prisoner on parole in its discretion after the prisoner has served the minimum term of the sentence imposed, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is a reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment for the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80. However, there may be exceptional cases in

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which the gravity of the offense is sufficient to warrant an upward departure from § 2.80 and denial of parole.

[65 FR 45888, July 26, 2000, as amended at 68 FR 41530, July 14, 2003]

### § 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established in this subpart, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) The Commission shall resolve relevant issues of fact in accordance with § 2.19(c). Decisions granting or denying parole shall be based on the concurrence of two Commissioners, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. A decision terminating a parolee early from supervision shall also be based on the concurrence of two Commissioners. All other decisions, including decisions on revocation and reparole made pursuant to § 2.105(c), shall be based on the vote of one Commissioner, except as otherwise provided in this subpart.

[65 FR 45888, July 26, 2000, as amended at 69 FR 68792, Nov. 26, 2004; 74 FR 28605, June 17, 2009; 75 FR 9519, Mar. 3, 2010]

### § 2.75 Reconsideration proceedings.

(a)(1) Following an initial or subsequent hearing, the Commission may—

(i) Set an effective date of parole within nine months of the date of the hearing;

(ii) Set a presumptive parole date at least ten months but not more than three years from the date of the hearing;

(iii) Continue the prisoner to the expiration of sentence if the prisoner's mandatory release date is within three years of the date of the hearing;

(iv) Schedule a reconsideration hearing at three years from the month of the hearing; or

(v) Remand the case for a rehearing on the next available docket (but no later than 180 days from the date of the hearing) for the consideration of additional information.

(2) *Exceptions.* (i) With respect to the rule on three-year reconsideration hearings. If the prisoner's current offense behavior resulted in the death of a victim and, at the time of the hearing, the prisoner must serve more than three years before reaching the minimum of the applicable guideline range, the Commission may schedule a reconsideration hearing at a date up to five years from the month of the last hearing, but not beyond the minimum of the applicable guideline range.

(ii) With respect to youth offenders. Regardless of whether a presumptive parole date has been set, a reconsideration hearing shall be conducted every twelve months for a youth offender, and on the next available docket after the Commission is informed that the prisoner has completed his program plan.

(b) When a rehearing is scheduled, the prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified.

(c) At a reconsideration hearing, the Commission may take any action that it could take at an initial hearing. The scheduling of a reconsideration hearing does not imply that parole will be granted at such hearing.

(d) Prior to a parole reconsideration hearing, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled hearing.

(e) Notwithstanding a previously established reconsideration hearing, the Commission may reopen any case for a